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NO. 85-1435

Supreme Court, U.S.
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

REVEREND R. THEODORE LITTLE, JR.,
PETITIONER,

v.

FIRST BAPTIST CHURCH, CRESTWOOD,
RESPONDENT.

ON WRIT OF CERTIORARI FROM
THE SUPREME COURT OF VIRGINIA

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Respondent provides the following to clarify and to supplement Petitioner's Statement of the Case:

1. Respondent's members who filed the petition for a temporary injunction were acting in their official capacities on behalf of the Respondent with full authority.
2. The Petitioner had no property rights in or to his position as pastor.
3. The Petitioner was discharged by a clear majority of Respondent's members at a duly called meeting after proper notice.

SUMMARY OF THE ARGUMENT

The following summarizes the Argument of the Respondent:

1. A significant, valid and overriding governmental interest required the trial court to deny the Petitioner a hearing on his termination.
2. The dispute between Reverend Little and

the Church was based on a contractual claim involving only matters of church discipline and internal ecclesiastical decisions; therefore, judicial review on the merits is clearly barred by the First Amendment to the United States Constitution which prohibits government interference in ecclesiastical matters.

3. Because the dispute was based solely on ecclesiastical matters, the Chesapeake Circuit Court was limited to determining only whether the majority voted to remove the pastor at a duly called and fairly conducted meeting of the congregation.

4. The appointment of a special commissioner to "run and oversee" the congregational meeting to insure a fair and impartial meeting and the order of a permanent injunction to enforce the will of the majority of the Church did not violate the First Amendment.

5. Petitioner's inability to introduce evidence at the injunction hearing was a harmless error, if any, since three criminal warrants had already been served on the Petitioner precluding the Petitioner from going onto Respondent's property.

6. In becoming a member of the First Baptist Church, Reverend Little voluntarily submitted to be bound by the decisions of the Church; therefore, he has no recourse for review concerning the reasons for his termination.

ARGUMENT

I.

A SIGNIFICANT, VALID AND OVERRIDING GOVERNMENTAL INTEREST REQUIRED THE TRIAL COURT TO DENY THE PETITIONER A HEARING.

Petitioner admits that his entitlement to a hearing was conditioned on the absence of an overriding governmental interest. Although

Petitioner contends no such interest existed, it is clear that such an interest did exist, namely the government's interest in respecting the First Amendment to the Constitution of the United States. To have granted the Petitioner a hearing as he requested would have amounted to the State determining who the pastor of the Church should be and when, where, what and how worship services should be conducted. A congregation's determination as to who shall preach from the church pulpit is at the very heart of free exercise of religion. Simpson v. Wells Lamount Corporation, 494 F.2d 490 (1974).

In Simpson, supra, the Court dismissed an action against church defendants by the pastor who claimed that his removal as pastor and subsequent eviction of his family from the church parsonage violated his civil rights and the First, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of

the United States. The Court held that the application of the Civil Rights Act provisions would have resulted in a prohibited encroachment by the state into the area of religious freedom. The trial court had to balance the entitlement of the defendant to a hearing against the right of a religious organization to conduct its affairs free of civil court scrutiny or intrusion guaranteed by the First Amendment. The balance favors the religious organization.

II.

THE TRIAL COURT PROPERLY FOLLOWED THE "NEUTRAL PRINCIPLES APPROACH" IN DENYING PETITIONER'S REQUEST FOR A HEARING.

The neutral principles approach does not permit judicial review of contractual claims which involve matters of doctrine, discipline, faith, or internal organization. In Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020 (1979) the "neutral principles approach" was recognized

as the basic guideline to be followed in resolving disputes within a church. In using this approach civil courts must examine documents in purely secular terms and if the interpretation of such instruments would require the court to resolve a religious controversy then the court must defer to the resolution of the doctrinal issue by the authoritative body. Ibid., at 3026.

Several of the cases cited by Petitioner can be distinguished: United Methodist Council v. Superior Court, 439 U.S. 1369 (1978) involves the operation of retirement homes by the Church and was subject to jurisdiction because the Church was "doing business" in the state; Gipe v. Superior Court of Orange County, 124 Cal.App.3d 617, 177 Cal.Rptr. 590 (1981) asks whether a statute authorizing a labor commissioner to represent an indigent claimant in de novo proceedings, as applied to a discharged minister seeking to

recover severance pay allegedly promised him by the church, violates the First Amendment; and Thomas v. Lewis, 224 Ky. 307, 6 S.W.2d 255 (1928) involves two warring factions of a church and their rights to use the church property as determined by church constitutional provisions.

The Petitioner contends that the trial court ignored the neutral principles approach by denying the Petitioner an opportunity to present evidence at the injunction hearing. This is not so. The trial court followed the neutral principles approach. It separated the secular issues from the religious issues. It declined to receive evidence on the religious issues (who should be the Church's Pastor, and on what the internal workings of the Church were). It did receive evidence on the issue of whether Reverend Little was wrongfully discharged by referring the issue to Commissioner Overton. Thus, the trial court

took the least restrictive alternative.

In Nunn v. Black, 506 F.Supp. 444 (1981), dissident church members brought a civil rights action alleging that they were unlawfully expelled from church membership at a congregational meeting and that they were arrested for trespass on church property after having been warned to stay off. The Court stated:

> . . .Finally, it is clear that the fact that the local church may have departed arbitrarily from its established expulsion procedures in removing the plaintiffs is of no constitutional consequence, whether one appeals the First, Fifth, or Fourteenth Amendments. Serbian Orthodox Diocese v. Milivojecvich, 426 U.S. 696, 714, 96 S.Ct. 2372, 2382, 49 L.Ed.2d 151 (1976). It is the very nature of religious matters that ecclesiastical decisions are accepted as articles of faith, as opposed to the rational, objective mode of analysis and procedure used in secular decision-making. Therefore, in the present case constitutional concepts of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical

cognizance.... Nunn v. Black, supra, at 448.

The Court in Nunn concluded that "the plaintiffs enjoyed no right to continued Church membership that was protected by Federal law or the Constitution." Ibid., at 447.

It is submitted that the Petitioner is confusing his privilege to preach at a particular church with his entitlement to a hearing on his discharge. Reverend Little had no right to preach and the trial court had no right to select the Pastor of the Church. LeBlanc v. Davis, 432 So.2d 239 (La. 1983); Hemphill v. Zion Hope Primitive Baptist Church, 447 So.2d 976 (Fla.App.1 Dist. 1984). Petitioner had a right to be heard on his alleged wrongful termination and he was when Commissioner Overton received evidence and made findings.

In Graham v. Lockhart, 256 S.E.2d 518 (N.C. 1979) the Court held that in determining

whether a pastor of a congregational church was properly removed as pastor the court was limited to determining whether the majority voted to remove the pastor; whether the meeting was properly called and conducted, and whether the pastor was properly enjoined, permanently, from acting as pastor of the church.

In order to insure that congregational meetings and elections are conducted in a fair and impartial manner, courts have frequently appointed a special commissioner to run and oversee them. Willis v. Davis, 323 S.W.2d 847 (Ky. 1959); Smith v. Lewis, 578 S.W.2d 169 (Tex. 1979); Waters v. Hargest, supra; Reid v. Gholson, supra.

III.

PETITIONER'S INABILITY TO INTRODUCE EVIDENCE AT THE INJUNCTION HEARING WAS A HARMLESS ERROR, IF ANY, SINCE THREE CRIMINAL TRESPASS WARRANTS HAD ALREADY BEEN SERVED ON THE PETITIONER.

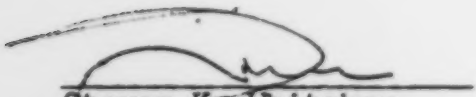
Assuming Petitioner was wrongfully denied a hearing, such a wrong amounted only to a harmless error. Petitioner voluntarily submitted himself to be bound by the decisions of the Church. The Church held a valid meeting and the Petitioner received actual notice of the meeting. Petitioner voluntarily chose to ignore the meeting, to ignore the Church's decision and to ignore the Church's notice to him to stop coming onto Church property. Petitioner placed himself above the rules of his Church. Petitioner had unclean hands in a court of equity. (See Appendix 1a thru 1h for letters). He was subsequently charged with three separate counts of criminal

trespass. Issuance and service of the warrants was made on the Petitioner. A specific condition of the Petitioner's release on bond was that he not go onto the Church property. (See Appendix 1i). Thus the injunction precluding the Petitioner from going onto the Church property simply re-affirmed the conditions of his bond.

CONCLUSION

For the foregoing reasons the judgment and order appealed from should be affirmed with costs.

Respectfully submitted,



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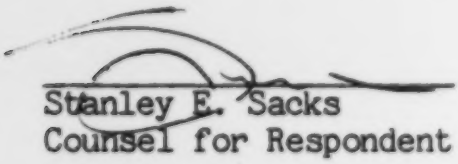

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APPENDIX

First Baptist Church, Crestwood

4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

Theodore R. Little, Jr., Pastor
Office Telephone 545-2602

October 26, 1984

The Reverend Theodore R. Little, Jr.
2413 Dunbarton Drive
Chesapeake, Virginia 23325

Dear Reverend Little:

Because of our inability to get you to sit with members of this church to resolve our grievances, we are requesting a meeting with you. We have tried numerous times to meet with you for redress to no avail. You have adjourned meetings, you have denied the official boards the opportunity to meet jointly. You have walked out of meetings.

For the well-being of the spiritual life of First Baptist Church Crestwood, we request that you meet with the congregation on Friday, November 16, 1984 at 8:00 P.M. We urge you not to disregard this request to meet. Again we repeat, the well-being of the spiritual life of First Baptist Church Crestwood needs to be discussed.

By the authority vested in us by a committee of members, we urge you not to disregard this request to meet.

Yours in Christ,

s/ James Turner
James Turner, Chairman,
Deacon Board

s/ Lewis M. Warren
Lewis Warren, Vice Chairman,
Trustee Board

s/ George Wimbish
George Wimbish, Church
Clerk

First Baptist Church, Crestwood

4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

Theodore R. Little, Jr. Pastor
Office Telephone 545-3602

October 26,1984

The Reverend Theodore R. Little, Jr.
2413 Dunbarton Drive
Chesapeake, Virginia 23325

Dear Reverend Little:

Please permit this announcement to be read at both the 7:00 and the 11:30 A.M. services on Sunday, October 28, 1984, on Sunday, November 4, 1984, and again on Sunday, November 11, 1984.

NOTICE

A Called Meeting of the congregation of First Baptist Church Crestwood will be held on Friday, November 16, 1984 at First Baptist Church Crestwood. All members are strongly urged to be present as there are serious matters of church/pastor relationships to be considered. The meeting time is 8:00 P.M.

Sincerely,

s/ James Turner
James Turner, Chairman,
Deacon Board

First Baptist Church, Crestwood

4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

Theodore R. Little, Jr. Pastor
Office Telephone 545-3602

November 1, 1984

A called Meeting of the congregation of First Baptist Church Crestwood will be held on Friday, November 16, 1984, at First Baptist Church Crestwood. You and all members of your family are urged to be present as there are several matters of church/pastor relationships to be considered. The meeting time is 8:00 P.M.

Yours in Christ,

James Turner
Chairman, Deacon Board

Lewis Warren
Vice Chairman, Trustee Board

George S. Wimbish
Church Clerk

First Baptist Church, Crestwood

4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

Theodore R. Little, Jr. Pastor
Office Telephone 545-3602

November 7, 1984

Dear Member:

Several days ago you were sent a letter in which we strongly urged you to attend the meeting called for Friday, November 16, 1984, 8:00 P.M. at First Baptist Church Crestwood.

This letter is designed to let you know why we instead of the Pastor have called the meeting. On October 23, 1984, we, the Deacons and Trustees, asked for a conference with the Pastor. He refused. On October 26, 1984, we made a formal request for a meeting through a letter to the Pastor. Up to this date, November 7, 1984, he has not responded. He has refused to call the meeting.

We, a Committee of Deacons, Trustees and lay members are very much concerned about the way in which the spiritual life of our church has fallen apart. We wish to meet to discuss some of the problems confronting us and to try to find solutions before First Baptist Church Crestwood ends up like New Calvary Baptist Church in Norfolk. One of the ways of finding solutions begins as the Bible instructs, "Come, let us reason together".

Please, we urge you to be present.

s/ James Turner
James Turner, Chairman,
Deacon Board

s/ Lewis Warren
Lewis Warren, Vice Chairman,
Trustee Board

s/ George Wimbish
George Wimbish, Church
Clerk

First Baptist Church, Crestwood

4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

Theodore R. Little, Jr., Pastor
Office Telephone 545-3602

November 11, 1984

Dear Brothers and Sisters:

This letter is designed to assure you that the meeting called for Friday, November 16, 1984, 8:00 P.M., First Baptist Church Crestwood WILL BE HELD AS PLANNED. PLEASE DISREGARD ALL RUMORS AND STATEMENTS THAT SAY SOMETHING DIFFERENT. We explained to you in our letter of last week that Rev. Little REFUSED to call the meeting. That is why we were forced to call it. Sisters and Brothers, this is not an easy situation. We are deeply troubled because First Baptist Church Crestwood is in serious trouble. We need to meet to discuss and try to resolve problems confronting the Church. We, you and I, must not allow this church to fall into the kind of situation found as New Calvary. We owe this to God, to our children and to ourselves.

We have followed the teaching of the Bible which says "If you have ought with your brother, go to him". We have gone to Rev. Little individually, in groups, and as members of boards to talk about our concerns for the church. We have requested other ministers to

talk to him on our behalf. None of these efforts has done any good. Rev. Little will not hear us. Deacons and Trustees sought to meet to discuss problems confronting the church. Rev. Little stood in the door of the church and would not allow them to go into the church to meet. Deacons and Trustees have requested him to call a meeting of the congregation to discuss and resolve problems confronting the church. He refused. When members rise in Conference to address problems confronting the church, Rev. Little immediately calls the persons out of order. If they insist on talking, he adjourns the meeting while members are still talking.

Please, we urge you to attend the meeting so that we may be able to avoid becoming the next New Calvary!

Yours in Christ,

s/ James Turner
James Turner, Chairman,
Trustee Board

s/ Lewis Warren
Lewis Warren, Vice Chairman,
Trustee Board

s/ George Wimbish
George Wimbish, Church
Clerk

First Baptist Church, Crestwood

4709 Bainbridge Boulevard
Chesapeake, VA 23320

Office Telephone 546-3602

November 17, 1984

The Reverend Theodore R. Little, Jr.
2413 Dunbarton Drive
Chesapeake, VA 23335

Dear Reverend Little:

We regret you did not attend the meeting held on November 16, 1984. Four (4) letters were sent beckoning your attendance but you chose not to be present. Nevertheless, it is our duty to inform you of the results of actions taken at that meeting.

The members in attendance at the Congregational Meeting of First Baptist Church Crestwood voted after long and painful deliberation to terminate your services as Pastor of First Baptist Church Crestwood, effective immediately.

The congregation also agreed and voted to pay your salary for 90 days according to the terms of our contract.

Please notify, at your earliest convenience, the chairman of the Deacon and

Trustee Boards respectively to indicate when you would like to collect your personal effects.

God's blessings be with you and your family.

Yours in Christ,

s/ James Turner
James Turner, Chairman,
Deacon Board

s/ Lewis Warren
Lewis Warren, Vice Chairman,
Trustee Board

s/ George Wimbish
George Wimbish, Church Clerk

First Baptist Church, Crestwood
4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

November 27, 1984

Dear Brothers and Sisters:

This letter is to let you know where we are with our problems with Reverend Little, our former pastor and to request that you be present at a meeting being called for Friday night, November 30, 1984 at 8:00 P.M. First Baptist Church Crestwood.

The members of your committee followed the wishes of those who came to the meeting on November 16, 1984 and voted to terminate the services of Reverend Little as pastor of first Baptist Church Crestwood. On the very next day, a letter was written to Reverend Little telling him of our vote to terminate his services, effective immediately. A delegation of Deacons and Trustees delivered the letter to Reverend Little at his home. At that time, the Brothers urged Reverend Little not to occupy the pulpit of First Baptist Church Crestwood again.

To be absolutely sure that Reverend Little fully understood their urging, the Brothers went to the Church at 6:30 A.M. on November 18, 1984 so as make their statement to him again. Reverend Little came and brushed by the Brothers in total disregard.

As you might know, Reverend still will not honor and respect the wishes of the Congregants who voted by a margin of 10-1 to terminate his

services at a duly called meeting on November 16, 1984. He has continued to come to every service and "preach" as if he has received no letter of dismissal/termination.

We feel we MUST take other steps to protect our religious freedom and we do so reluctantly. We must take legal steps to get Reverend Little to terminate his services which are no longer desired by us because of his refusal to abide by terms of his contract with us as relates to our freedom and rights in the Church.

Because of the need to take legal action and because you need to have some feedback as to what is likely to occur, we are calling a meeting for Friday November 30, 1984 at 8:00 P.M.

Please, we urge you to be present. Continue to pray that God will continue to guide us in all things.

Yours in Christ,

s/ James Turner
James Turner, Chairman of Deacons

s / Lewis Warren
Lewis Warren, Vice-Chairman of Trustees

s/ George Wimbish
George Wimbish, Church Clerk

First Baptist Church, Crestwood
4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

November 27, 1984

The Reverend Theodore Little. Jr.
2413 Dunbarton Drive
Chesapeake, Virginia 23325

Dear Reverend Little:

As indicated to you in our letter of November 17, 1984, in a duly called meeting of the Congregation of First Baptist Church Crestwood held on November 16, 1984, your services as Pastor were terminated because of our inability to get you to live up to the terms of your contract with the Church. This letter is to inform you that we cannot continue to allow you to totally disregard our wishes in this matter by continuing to occupy the pulpit against the wishes of the congregation by a vote of 10 to 1.

As unpleasant as it might be, we will have no alternative but to have you arrested for trespassing of if you persist in violating us by occupying the Pulpit.

Yours in Christ,

s/ James Turner
James Turner, Chairman of the
Deacon Board

1h

s/ Lewis Warren
Lewis Warren, Vice-Chairman
Trustees

s/ George S. Wimbish
George S. Wimbish, Church
Clerk

CERTIFICATE

In accordance with Rule 21 of the Rules of the Supreme Court of the United States, I hereby certify that I have this 1st day of March, 1986 mailed the required copies of the Brief In Opposition to the Petition for Certiorari to the Clerk's Office of the Supreme Court of the United States, and have also mailed the required copies of the above mentioned documents to all attorneys of record as follows:

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Stanley E. Sacks

Sacks & Sacks
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P.O. Box 3291
Norfolk, VA 23514

Taken, subscribed and sworn to before me this

17th day of March, 1986.

My commission expires:

4/17/88.

Notary Public